

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TRACY N. PARNELL,

Petitioner,

vs.

SCOTT R. FRAKES,

Respondent.

8:20CV352

MEMORANDUM AND ORDER

This matter is before the court on the Notice of Appeal (filing 37) filed by Petitioner on August 8, 2022. Petitioner appeals from the court's Memorandum and Order and Judgment dated June 22, 2022 (filings 35 & 36), in which the court dismissed his habeas petition with prejudice. Also before the court is a memorandum from the Clerk of the Court requesting a ruling as to Petitioner's authorization to proceed in forma pauperis on appeal. (Filing 40.) Petitioner has also filed a Motion for a Certificate of Appealability (filing 38) and brief in support (filing 39).

As set forth in Federal Rule of Appellate Procedure 24(a)(3):

(a) Leave to Proceed in Forma Pauperis . . .

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court--before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith

or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding

The court finds that because Petitioner proceeded IFP in the district court, he may now proceed on appeal in forma pauperis without further authorization.

Though captioned “In The United States District Court for the District of Nebraska,” Petitioner’s Motion for a Certificate of Appealability (filing 38) is clearly addressed to the Eighth Circuit Court of Appeals. The court, therefore, will direct the clerk of the court to terminate the motion event and transmit the motion to the Eighth Circuit Court of Appeals along with Petitioner’s Notice of Appeal.

IT IS THEREFORE ORDERED that:

1. Petitioner may proceed on appeal in forma pauperis.
2. The clerk of the court is directed to terminate the motion event for Filing 38, Petitioner’s Motion for a Certificate of Appealability, and transmit Filing 38 and Filing 39, Petitioner’s brief, to the Eighth Circuit Court of Appeals as a supplement to Petitioner’s Notice of Appeal.

Dated this 12th day of August, 2022.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge